

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CHASE PARTHÉ, #M26733,

Plaintiff,

v.

**THERESA DeBORD, and
LaDONNA LONG,**

Defendants.

Case No. 21-cv-0076-SPM

MEMORANDUM AND ORDER

MCGLYNN, District Judge:

This matter is again before the Court on Defendants' Motion to Dismiss for Failure to Prosecute (Doc. 36), filed on October 4, 2022. The motion will be granted.

Defendants assert that Plaintiff failed to provide his initial disclosures as ordered. (Docs. 33, 34, 35). The Court had warned Plaintiff that failure to produce his initial disclosures may result in the dismissal of this case as a sanction. (Doc. 35); *see* FED. R. CIV. P. 37(b). Plaintiff also never responded to Defendants' Interrogatories and Requests for Production even after Defendants notified him the responses were overdue. (Doc. 36, p. 2; Doc. 36-3).

On October 26, 2022, the Court notified Plaintiff of the impending dismissal of this case and ordered him to show cause by November 8, 2022 why the case should not be dismissed. (Doc. 37). After receipt of a letter from Plaintiff's father indicating that Plaintiff may not have received that Order, the Court extended Plaintiff's response deadline to November 30, 2022 and mailed the Orders to Plaintiff at Stateville Correctional Center Reception, where the IDOC Individuals in Custody Search website showed he was then housed, as well as to his family's address. (Doc. 42);

<https://idoc.illinois.gov/offender/inmatesearch.html>.¹ The Court's November 10, 2022 Order (Doc. 42) informed Plaintiff that failure to respond would result in dismissal of this case.

Plaintiff's extended deadline to respond is now long past, and Plaintiff has failed to communicate with the Court in any way. Accordingly, this case will be dismissed.

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss for Failure to Prosecute (Doc. 36) is **GRANTED**, and this action is **DISMISSED with prejudice** for failure to prosecute. FED. R. CIV. P. 41(b); *see generally James v. McDonald's Corp.*, 417 F.3d 672, 681 (7th Cir. 2005); *Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Lucien v. Breweur*, 9 F.3d 26, 29 (7th Cir. 1993) (dismissal for failure to prosecute is presumptively with prejudice).

Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the remainder of his \$350.00 filing fee remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998).

The Court shall not count this dismissal as one of Plaintiff's three allotted "strikes" under the provisions of 28 U.S.C. § 1915(g).

If Plaintiff wishes to appeal this dismissal, his notice of appeal must be filed with this Court within thirty days of the entry of judgment. FED. R. APP. P. 4(a)(1)(A). A motion for leave to appeal *in forma pauperis* must set forth the issues Plaintiff plans to present on appeal. *See* FED. R. APP. P. 24(a)(1)(C). If Plaintiff does choose to appeal, he will be liable for the \$505.00 appellate filing fee irrespective of the outcome of the appeal. *See* FED. R. APP. P. 3(e); 28 U.S.C. § 1915(e)(2); *Ammons v. Gerlinger*, 547 F.3d 724, 725-26 (7th Cir. 2008); *Sloan v. Lesza*, 181 F.3d 857, 858-59 (7th Cir. 1999); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). Moreover, if the appeal is found to be nonmeritorious, Plaintiff may also incur a "strike." A proper and timely motion filed

¹ As of December 22, 2022, the IDOC website showed Plaintiff was still housed at Stateville Reception.

pursuant to Federal Rule of Civil Procedure 59(e) may toll the 30-day appeal deadline. FED. R. APP. P. 4(a)(4). A Rule 59(e) motion must be filed no more than twenty-eight (28) days after the entry of the judgment, and this 28-day deadline cannot be extended.

The Clerk is **DIRECTED** to **CLOSE THIS CASE** and enter judgment accordingly. The Clerk is **FURTHER DIRECTED** to send a copy of this Order and the Judgment to Plaintiff at Stateville Correctional Center, Northern Reception Center, and to: 1 Mary Ellen Way, Bloomington, IL 61701.

IT IS SO ORDERED.

DATED: December 27, 2022

s/ Stephen P. McGlynn
STEPHEN P. MCGLYNN
United States District Judge